

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 May 2004

CASE NO. 2003-LHC-02853

OWCP NO. 01-151252

In the Matter of

ISABEL T. McFADDEN
Claimant

v.

ELECTRIC BOAT CORPORATION
Employer/Self-Insured

Appearances:

Carolyn P. Kelly (O'Brien, Shafner, Stuart, Kelly
& Morris), Groton, Connecticut, for the Claimants

Edward W. Murphy (Morrison, Mahoney & Miller),
Boston, Massachusetts, for Electric Boat Corporation

Before: Daniel F. Sutton
Administrative Law Judge

DECISION AND ORDER AWARDING MEDICAL BENEFITS

I. Statement of the Case

This proceeding arises from a claim for worker's compensation benefits filed by Isabel T. McFadden (the "Claimant") against the Electric Boat Corporation ("EBC") under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq.* (the "LHWCA" or "Act"). The Claimant was employed by EBC as a welder for two periods, 1980 to 1995 and June 2000 to the present time. She brought this claim, alleging that she suffered a work-related injury to her hands while working for EBC, and she is seeking authorization to undergo surgical procedures recommended by two hand surgeons. The Claimant also suffered another work-related injury to her left wrist in 1999 while working at another job that is not covered by the LHWCA, and an issue arose regarding the impact of this injury on EBC's liability. When the parties were unable to resolve this issue during informal

proceedings before the District Director of the Department of Labor's Office of Workers' Compensation Programs ("OWCP"), the matter was referred to the Office of Administrative Law Judges ("OALJ") for formal hearing.

Pursuant to notice, a formal hearing was conducted before me in New London, Connecticut on February 24, 2004, at which time the Claimant appeared represented by counsel, and an appearance was made on behalf of EBC. The Claimant testified at the hearing, and documentary evidence was admitted without objection as Claimant's Exhibits ("CX") 1-10 and EBC Exhibits ("EX") 1-5. Hearing Transcript ("TR") 11-12. Stipulations were offered as Joint Exhibit ("JX") 1. TR 13. After the close of the hearing, the Claimant offered a medical report dated February 27, 2004 from Stephen F. Scarangella, M.D. which has been admitted without objection as CX 11.

The Claimant agreed at the hearing that EBC had voluntarily paid her permanent partial disability compensation so that permanent partial disability was no longer an issue. TR 7-8. The parties were requested at the close of the hearing to notify me within whether they had been able to resolve the remaining issues and, if so, whether the case could be remanded to the OWCP. TR 45. By letter dated March 31, 2004, the Claimant advised that EBC and the carrier for the employer at the time of the 1999 left wrist injury had reached an agreement to share the cost of the requested carpal tunnel release procedure and that she had received an authorization for the procedure from EBC. However, the Claimant also stated there was no written agreement and that there was a potential issue regarding the proper amount of compensation that she should receive for a period of anticipated temporary disability following the recommended surgery. For this reason, the Claimant stated that it is necessary to establish EBC's liability by order. EBC filed its status report on April 8, 2004, confirming that an agreement had been reached with the carrier for the 1999 injury to apportion their respective shares of the surgery with EBC being billed for the costs. EBC further stated that the compensation issue raised by the Claimant's attorney is not ripe for adjudication as the Claimant has yet to incur any loss of earnings, and it requested that the matter be remanded to the District Director. The Claimant responded on April 15, 2004 that she opposed EBC's request for remand essentially on the ground that there remains a controversy, despite the agreement between EBC and the other carrier regarding the costs of the surgery, as to EBC's liability which should be adjudicated.

After consideration of the parties' positions, I conclude that although EBC is to be commended for its efforts in reaching an agreement with the other carrier so that the surgery could be authorized without further delay to the Claimant, the parties have not resolved the issue of whether EBC is liable under the LHWCA for an aggravation of the Claimant's left upper extremity condition which allegedly occurred after she returned to work for EBC in 2000. Under these circumstances, I find that a remand of the claim is not warranted. Regarding the merits of the claim, I find that EBC is liable under the LHWCA's aggravation rule for the entire cost of the recommended surgery. My findings of fact and conclusions of law are set forth below.

II. Findings of Fact and Conclusions of Law

A. Stipulations and Issue Presented

The parties offered the following stipulations at the hearing (1) the LHWCA applies to this claim; (2) the Claimant sustained an injury on November 8, 2000 at her place of employment in Groton, Connecticut; (3) the Claimant's carpal tunnel syndrome arose out of and in the course of her employment at EBC; (4) EBC was timely notified of the injury; (5) the claim and notice of controversion were timely filed; (6) the informal conference was held on July 30, 2003; (7) the Claimant's average weekly wage at the time of the injury was \$884.90; and (8) medical benefits totaling \$941.73 have been paid. JX 1 at 1. The parties identified the following issues for adjudication: (1) whether EBC is responsible for those elements of the recommended surgical procedure related to the Claimant's wrist instability; and (2) whether the Claimant is entitled to a period of post-surgical temporary total disability. JX 1 at 2.

B. Background

The Claimant is a 44 year old who was hired by EBC in 1980 as a structural welder. TR 16-17. Her job involves welding submarine sections together, and she used vibrating tools to grind welds. TR 17-18. She also used a chipping hammer to remove "slag" from welds. TR 19. She estimated that she welded for six hours on each shift and did chipping and grinding for two hours. TR 20-21. The Claimant testified that she had "some tingling" in her hands before she was laid off by EBC in 1995, but she did not really notice hand symptoms until after she was recalled by EBC in June 2000 and resumed her welding duties. TR 21.

In 1994, the Claimant began working as a certified nursing assistant (CNA) at a nursing home while she was still working at EBC. TR 17, 26-27. When she was laid off by EBC in 1995, she continued to work at the nursing home and remained there working weekends after June 2000 when she was recalled to work by EBC. TR 17, 27. In November 1999, she injured her left wrist while attempting to lift a patient at the nursing home. TR 22, 29. She testified that felt a "snap" in her wrist which was followed by the gradual growth of a lump. TR 21-22. She sought treatment from Thomas C. Cherry, M.D., a hand surgeon who excised a ganglion cyst from the left wrist. TR 22, 27. She missed about six weeks from work at the nursing home due to this injury. TR 27. After this procedure was performed by Dr. Cherry, the Claimant continued to experience problems with her left wrist. TR 22-23. She returned to Dr. Cherry who referred her to William A. Wainwright, M.D., a hand and orthopedic surgeon. TR 23.

In June 2000, the Claimant returned to work at EBC as a welder. TR 28. She had some restrictions related to a prior knee injury but had no restrictions on the use of her upper extremities. TR 30-31. She continued to use pneumatic tools for about two hours a day on average and developed symptoms of pain, numbness and cold in both hands and fingers, particularly after prolonged welding and grinding, which she reported to EBC's Yard Hospital on November 10, 2000. TR 31-32; CX 1 at 1. Dr. Wainwright eventually diagnosed her with a work-related carpal tunnel neurologic injury and vascular vibratory white finger disease. TR 23-24; CX 3 at 2. Dr. Wainwright also found that the Claimant suffers from left wrist instability

with ongoing symptoms involving the scapholunate ligament which is also known as “dorsal wrist syndrome.” CX 5 at 1.

C. The Recommended Surgery

In October 2002, Dr. Wainwright reported that a MRI study showed a partial tear of the Claimant’s scapholunate ligament. CX 7 at 1. He concluded that the Claimant was a candidate for re-exploration of her dorsal wrist syndrome, for which he suggested three possible procedures – localized synovectomy, stabilization of the schapholunate instability with ligament reconstruction, or ulnar wrist fusion, and he decided to refer the Claimant to Stephen F. Scarangella, M.D. for further evaluation. *Id.* Dr. Scarangella saw the Claimant in March and April 2003. CX 8. He concluded that the Claimant should simultaneously undergo carpal tunnel release surgery and arthroscopic evaluation of her left wrist and a dorsal capsulodesis reconstruction of the ligament if the arthroscopic findings revealed no significant degenerative joint disease. *Id.* at 2.

Drs. Wainwright and Scarangella also addressed the causes of the Claimant’s injuries for which they are recommending surgical intervention. In the report of his initial evaluation which was requested by EBC, Dr. Wainwright attributed the Claimant’s vibratory white finger disease to the use of her hands while employed by EBC, and he stated that her impairment due to neurologic damage (carpal tunnel syndrome) is partially attributable to use of her hands at EBC and partially due to use of her hands as a nursing assistant. CX 3 at 2. Dr. Scarangella similarly stated that the Claimant’s carpal tunnel syndrome is a “well established Electric Boat compensation injury.” CX 8 at 1. He further stated that the Claimant has “two distinct work injuries” and that her wrist instability is related to the injury sustained while working as a nursing assistant. *Id.* Subsequent to Dr. Scarangella’s second opinion, the Claimant was seen by Dr. Wainwright for a follow-up evaluation in July 2003. CX 9. At that time, Dr. Wainwright reported the following impression:

44-year-old female with left wrist instability as a result of a work-related injury while working as a certified nurse assistant for Center for Optimum care. She also has signs and symptoms consistent with median nerve entrapment at the wrist, as seen in carpal tunnel syndrome. Her symptoms have increased since her last visit to this office. This is a work-related injury and due to the use of her hands while employed at Electric Boat as a welder. I feel it is a reasonable plan to proceed surgically an address both of these areas at the time of one surgical sitting. The advantage of this approach is less overall recovery time for the patient. The financial cost will be less for the two insurance carriers, as well. The patient will be faced with one out of work episode, rather than two separate out of work episodes. The natural history of carpal tunnel syndrome, especially in a worker doing heavy manual labor, such as a welder at E.B., and using air-powered vibrating tools is one of gradual worsening. Therefore, addressing her carpal tunnel syndrome surgically at this time is a logical choice, in my opinion. From her carpal tunnel release I’d expect her to be disabled approximately six weeks. She should then be able to return to her employment as a welder. I would caution her to avoid the use of air-powered vibrating tools as much as possible, if

she does return to her job as a welder. Her recovery from her restabilization of her wrist with reconstruction of scapholunate support will be more long-term. Depending on Dr. Scarangella's findings at surgery and his postoperative protocol she will be immobilized for anywhere from 6-12 weeks with gradual increase of stress on the reconstructive ligamentous support system. The exact protocol would depend on Dr. Scarangella's desires. She will be disabled for a far longer period of time due to her scapholunate injury than she would be from her carpal tunnel syndrome.

Id. at 2-3. Finally, Dr. Wainwright responded in a letter dated October 21, 2003 to a series of questions posed by EBC. EX 5. In response to EBC's question as to whether the Claimant's medical problems from her nursing home injury were aggravating her carpal tunnel syndrome, Dr. Wainwright answered "yes", stating that the Claimant injured the ligamentous support of her left wrist while working at the nursing home and that "wrist instability is a recognized aggravating factor for her carpal tunnel syndrome."

Id. at 1.¹ He stated that he was uncertain whether the Claimant would be a surgical candidate based solely on her carpal tunnel syndrome, and he agreed that the Claimant should have a trial of conservative therapy before undergoing carpal tunnel release surgery. *Id.*² On the other hand, he doubted that conservative treatment would relieve the symptoms related to the Claimant's dorsal wrist syndrome other than on a temporary basis, and he stated that it is possible that the scaphoid instability surgery could reduce her carpal tunnel syndrome, although it is also possible that post-operative swelling could actually increase her symptoms in the short run. *Id.* at 1-2.

D. Is EBC liable under the LHWCA for the recommended surgical procedures?

Section 7(a) of the LHWCA provides that an "employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. § 907(a). Section 7(a) thus imposes liability for all medical expenses which are the natural and unavoidable result of the work injury, and not due to an intervening cause. *See Atlantic Marine v. Bruce*, 661 F.2d 898, 901 (5th Cir. 1981). Additionally, an employer's liability under the LHWCA extends to pre-existing conditions which are aggravated by a work-related injury. *Potenza v. United Terminals, Inc.*, 524 F.2d 1136, 1137 (2d Cir. 1975). EBC has stipulated that the Claimant's carpal tunnel syndrome is causally related to her employment as a welder, and it readily accepts that it is responsible for any disability compensation and medical care attributable to this condition, including the carpal tunnel release procedure recommended by Drs. Wainwright and Scarangella. However, it denies responsibility for the entire cost of the

¹ It does not appear that Dr. Wainwright was asked whether the Claimant's carpal tunnel syndrome and/or vibratory white finger disease aggravated her dorsal wrist syndrome.

² It is noted that the records from EBC's Yard Hospital indicate that the Claimant was given a course of conservative treatment including physical therapy in January 2001. CX 1 at 5-7. Despite these measures, the Claimant returned to Dr. Cherry in June 2001 with continuing hand symptoms. CX 4 at 1.

recommended surgery on the ground that the arthroscopy and reconstruction procedure for the dorsal wrist syndrome is not necessary for the Claimant's carpal tunnel syndrome but rather is related to the separate ligament injury that she suffered at the nursing home for which another carrier is liable under the state workers' compensation act. Thus, EBC argues that it should not be required to pay for surgery to correct an impairment for which it is not responsible under the LHWCA. The Claimant counters that EBC should be held liable under the LHWCA for the full cost of both procedures under the aggravation rule which provides that "[w]here an employment injury worsens or combines with a pre-existing impairment to produce a disability greater than that which would have resulted from the employment injury alone, the entire resulting disability is compensable." *New Haven Terminal Corp v. Lake*, 337 F.3d 261, 268 (2003), quoting *Director, Office of Workers' Comp. Programs v. General Dynamics Corp*, 900 F.2d 506, 508 (2d Cir.1990), *overruled, in part, on other grounds by Director, Office of Workers' Comp. Programs v. General Dynamics Corp.*, 982 F.2d 790, 792-93 (2d Cir.1992).

EBC's reluctance to pay for a problem created by another employer is understandable, but its position in this matter runs counter to policies underlying the LHWCA. As the Court reiterated in *Lake*, the aggravation rule rests on the "presumption of compensability grounded in the humanitarian nature of the [LHWCA]" and promotes the legislation's goals of "complete recovery for injuries . . . [and] to provide benefits which are easily, quickly, and routinely established." *Id.* at 268, quoting *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 518-520 (5th Cir. 1986). While the evidence is equivocal regarding the extent to which the Claimant's EBC-related carpal tunnel syndrome and vibratory white finger disease actually aggravated her dorsal wrist syndrome, it is clear from the record that these multiple conditions coalesced after the Claimant's return to work at EBC in June 2000 to produce a combination of symptoms and impairments that caused Drs. Wainwright and Scarangella to recommend the multifaceted surgical intervention. In this regard, I find it significant that the earliest indication in the record that the Claimant was continuing to have upper extremity problems subsequent to the November 1999 wrist injury and ganglion excision was in November 2000 when she reported work-related carpal tunnel and white finger symptoms to EBC's Yard Hospital. The first reference to continuing ligament problems is found in Dr. Cherry's office note of July 12, 2001, after the Claimant had been working at EBC for over a year, when he recommended further evaluation by Dr. Wainwright. CX 4 at 1. Nearly one year later, Dr. Wainwright, whose initial evaluation report of May 30, 2001 (CX 3) made no mention of any continuing left wrist problem, examined the Claimant's left wrist on June 5, 2002 and reported that "[f]luoroscopy today, including multiple stress views does demonstrate an increase in the scapholunate gap consistent with her underlying wrist instability." CX 5 at 1. On these facts, I find that the Claimant has established that her carpal tunnel syndrome and vibratory white finger disease, both of which are causally related to her employment at EBC, combined with the pre-existing left dorsal wrist injury to produce a disability that is greater than that which would have resulted from EBC injuries alone. Accordingly, the entire resulting disability, including all necessary medical care, is compensable under the aggravation rule. Therefore, EBC will be ordered to pay the full cost of the surgery recommended by Drs. Wainwright and Scarangella.³

³ This order is entered under the LHCWA and is without prejudice to EBC's rights to seek contribution from the other carrier in another appropriate forum.

E. Is the Claimant entitled to an award of temporary disability compensation?

Since the Claimant has yet to undergo surgery and has not to date lost any time from work due to her compensable injuries, I find that it would be improvident at this point to make an award of compensation in the event that she is temporarily incapacitated, as forecast by Dr. Wainwright, while she is recuperating from the surgery. In the unlikely event that a dispute does arise in the future with respect to the Claimant's entitlement to temporary disability entitlement, the matter can be addressed at that time in an appropriate factual setting where all parties will have a full and fair opportunity to be heard.

III. Order

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, the following order is entered:

(1) Electric Boat Corporation as a self-insured employer shall provide all reasonable and necessary medical care pursuant to 33 U.S.C. § 907 for Isabel T. McFadden's compensable vibratory white finger disease, carpal tunnel syndrome and left dorsal wrist syndrome, including the surgical procedures recommended by Drs. Wainwright and Scarangella; and

(2) The Claimant's attorney shall have 30 days from the date of this order in which to file an application for attorney's fees pursuant to 33 U.S.C. § 928 and 20 C.F.R. § 702.132, and Electric Boat Corporation shall have 15 days thereafter within which to file any objection.

SO ORDERED.

A

DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts